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# **Special Education Transportation: When Something Happens on the Bus**

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# I. INTRODUCTION

"Something happened on the bus" are five words dreaded by every special education director in the country. In this session, we will begin with a review of federal special education transportation statutes and regulations. Next, the outline will address common transportation questions. Finally, time will be allotted for your specific questions.

Keep in mind that the cases cited in this article may carry precedential weight for a particular situation, but different facts can (and often do) lead to different outcomes. Please consult legal counsel for specific advice concerning your situation. The full text of the judicial and administrative decisions referenced in this article can be found in LRP Publications' Individuals with Disabilities Education Law Report® (IDELR) and Special Ed Connection® Website at <a href="http://www.specialedconnection.com">http://www.specialedconnection.com</a>.

# II. FEDERAL LAWS

This presentation will focus on the IDEA statute and regulations, however, it is important to keep in mind that Section 504 and the ADA sometimes also apply to special education student transportation issues. The IDEA and its implementing regulations both clearly provide that transportation can be a "related service" that must be provided at no cost for students with disabilities [20 U.S.C. §1401(26); 34 C.F.R. §300.34].

#### A. IDEA

The IDEA regulations provide that transportation is a related service that includes [34 C.F.R. §300.34(c)(16)]:

- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings; and
- (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.



- **B.** Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794 and its implementing regulations 34 C.F.R. §104.1 et. seq.
  - 1. **How does Section 504 apply?** Section 504 requires that recipients of federal financial aid do not discriminate against qualified persons on the basis of disability [34 C.F.R. §104.43]:

No qualified student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any . . . transportation, other extracurricular, or other post-secondary education program or activity (emphasis added).

2. What is an example of a Section 504 transportation issue? Typically, the only time that a transportation issue arises under Section 504 is in situations where a school district has determined that a Section 504 student requires transportation in order to receive FAPE (free, appropriate, public education). This is very unusual. In situations where you have a transportation dispute involving a Section 504 eligible student, you should first determine whether the student's Section 504 Plan requires transportation as a related service. If the answer is no, you may discipline the student in the same manner as general education students. If the answer is yes, you will need to provide another form of transportation for the student, unless parents agree to assume responsibility for transportation.

# C. Americans with Disabilities Act (ADA), 42 U.S.C. §12101

- 1. **How does the ADA apply?** The ADA can also impact the provision of transportation to students with disabilities. The ADA prohibits discrimination against all persons with disabilities, and applies to public agencies, including schools and school-age children.
- 2. What is an example of an ADA transportation issue? A general education student requires hip surgery after breaking his hip and femur while skiing. His hip must remain immobile for a period of four weeks, meaning that he can no longer ride the regular school bus. He lives 10 miles from school. Does the school district have a lift bus in its fleet? Can the school district secure a lift bus elsewhere without "undue cost"? If yes, the lift bus should be dispatched to pick up and drop off the student. If no, homebound tutoring must be provided or parents can transport. This is considered a temporary disability, but if it can be accommodated without undue cost, it should be accommodated.



# III. TRANSPORTATION AS A RELATED SERVICE

- A. Is transportation always considered a related service that must be provided to students with disabilities? No.
- **B.** Each IEP team is charged with the responsibility for deciding, on an individualized basis, whether or not a special education student requires transportation as a related service in order to receive a free appropriate public education (FAPE). If a student with a disability requires transportation as a related service, the school district must provide it at no cost to parents. This is true even in situations where the district does not otherwise offer transportation to nondisabled students.

#### C. Lincoln Elementary Sch. Dist. 156, 47 IDELR 57 (SEA III. 2006)

- 1. Hearing officer defers to team's decision that transportation is not a required related service.
- 2. Five-year-old student with a developmental disability lived six blocks from school. Students were not eligible for bus transportation unless they resided over 1.5 miles of the school or a student's IEP team designated transportation as a related service. The IEP team determined that transportation was not needed as a related service. Although the student had asthma, he was active and there was no medical documentation of the severity of the asthma. The holding in this case confirmed that children with disabilities are entitled to receive the same transportation as their nondisabled peers unless the IEP team determines otherwise. Here the IEP team did not deem that transportation was a related service needed to benefit from his education and the hearing officer did not second guess that decision.

# **D.** Soquel Union Elementary Sch. Dist., 108 LRP 512 (SEA Cal. 2007)

- 1. Transportation not required where student's need for transportation was the same as that of his nondisabled preschool peers.
- 2. The district previously provided transportation to all special education students, but had changed the policy so that it was provided only to those who required it as a related service. Parent requested that transportation be included in preschool student's IEP. The fact that the student, like most of his pre-school peers, could not safely walk to school independently did not mean he automatically qualified for transportation. He did not need transportation due to his unique needs; his needs were the same as that of typically developing peers. The hearing officer found that transportation was not required for the student to receive educational benefit.



# E. Los Angeles Unified Sch. Dist., 51 IDELR 292 (SEA Cal. 2009)

- 1. Transportation not required where parents signed IEP without it and student could get to school on her own.
- 2. 5th grade student with a learning disability attended a school other than her neighborhood school through the Program Improvement School Choice Program (part of NCLB) and received transportation from her neighborhood school to the school she was attending. The student did require transportation when she attended her neighborhood school the year before. The student had no cognitive or physical disabilities, but her parents claimed that walking to school and waiting for the bus was not safe for a young girl. No persuasive evidence was presented that the route to the neighborhood school or the bus zone were unsafe. Student had no unique needs that required transportation from home to school so district offered FAPE.

# F. Weymouth Public Schools, 56 IDELR 117 (SEA Mass. 2011)

- 1. Transportation required though need was not related to the student's disability.
- 2. District offered two 30-minute sessions of speech per week to a 4-year old student attending a private preschool at parental expense. Parents wanted transportation between the private preschool and the public school where the speech services would be provided, four houses down the street. District argued that the student did not need transportation because of her disability (speech impairment) and therefore the district was not responsible for transportation. The hearing officer disagreed, despite a Massachusetts regulation that provided otherwise: "The IDEA requires transportation if that service is necessary for a disabled child 'to benefit from special education,' even if that child has no ambulatory impairment that directly causes a 'unique need' for some form of specialized transport." The hearing officer looked at the following factors to determine whether transportation was actually necessary for the student to benefit from the speech-language services to which she was entitled: her age; the distance she must travel; the nature of the area through which she must pass; her access to private assistance in making the trip; and the availability of other forms of public assistance in route, such as crossing guards or public transit. Even though the distance was very short, the hearing officer found that the young student could not travel independently to her speech services.

#### **G.** Eagle County Sch. Dist. RE-50J, 46 IDELR 176 (SEA Colo. 2006)

1. Transportation required though need was not related to disability.

2. Mother requested transportation for four-year-old son receiving speech services at the local elementary school to his day care center 10 miles away. The district did not provide transportation for any preschool student, disabled or not, unless it was necessary as a related service. The district claimed transportation was only required if needed by reason of the student's disability; the student's speech impairment did not impair the student's mobility. The hearing officer cited regulatory guidance that transportation as a related service includes transporting preschool aged children to the site where the district provides special education if that site is different from the site where the child receives other preschool or day care services. Transportation must be provided as a related service if necessary to access special education, regardless of the presence of any direct link between the child's disability and the need for transportation. In this case, the student could not receive special education services without district transportation, so transportation between preschool and day care was required for FAPE.

# H. In re: Student with a Disability, 110 LRP 26505 (SEA Penn. 2009)

- 1. Transportation required when parent did not have a vehicle to transport her child to school.
- 2. District offered to reimburse parents for transporting two-year-old student eligible for early intervention services to school for the deaf but refused to provide transportation. Parent did not have a car. Hearing officer found that the student required transportation and the district was required to provide it; reimbursement was not sufficient given the facts of the case.

#### IV. LRE MANDATE

- A. Does the LRE (least restrictive environment) mandate apply to transportation? Yes school districts must consider the IDEA's least restrictive environment (LRE) mandate in making transportation decisions.
- **B.** Each public agency must ensure that [34 C.F.R. 300.114(a)(2)]:
  - (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
  - (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.



# C. Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46576 (August 14, 2006):

- 1. "Discussion: It is assumed that most children with disabilities will receive the same transportation provided to nondisabled children, consistent with the LRE requirements in Sec. 300.114 through 300.120, unless the IEP Team determines otherwise. While we understand the commenter's concern, adapted buses may or may not be part of the regular transportation system in a particular school system. In any case, if the IEP Team determines that a child with a disability requires transportation as a related service in order to receive FAPE, or requires supports to participate in integrated transportation with nondisabled children, the child must receive the necessary transportation or supports at no cost to the parents."
- 2. Generally speaking, the use of alternative vehicles that do not provide the student with opportunities to interact with nondisabled peers may be permissible where the student's disability prevents the child from riding safely on a regular school bus or poses a safety threat to other students.

#### **D.** Letter to Hamilton, 25 IDELR 520 (OSEP 1996)

- 1. If a student with disability is capable of using the same transportation services as nondisabled students, the IDEA does not require transportation to be listed as a related service in the IEP.
- 2. In cases where a district does not provide transportation to its general population, and parents transport students in return for mileage compensation, the IEP team must determine the district's obligation to provide transportation to students with disabilities on a case-by-case basis. The school district must make that determination based upon the relationship between the child's disabilities and the need for a particular related service.

# **E.** Alvin Indep. Sch. Dist., 506 IDELR 294 (SEA TX 1984)

- 1. "[The] 'least restrictive environment' requirement also applies to transportation services provided to handicapped students."
- 2. "Specifically, 34 C.F.R. Part 300.553, states, "In providing or arranging for the provisions of non-academic and extra-curricular services and activities including meals, recess periods, and the services and activities, set forth in Reg. 300.306 of Subpart C (which includes transportation), each public agency shall insure that each handicapped child participates with non-handicapped children to the maximum extent appropriate to the needs of that child." However, federal regulations also require school districts in selecting the 'least restrictive environment' to give



- consideration to any potential harmful effect on the child or on the quality of services which he or she needs. 34 C.F.R. Part. 300.552(d)."
- 3. "In this case the potential harmful effects to Teri outweigh the benefits she might derive from riding a regular school bus. Testimony indicated that Teri, although able to ride a regular school bus on one occasion without incident, is inconsistent in her orientation and mobility skills and consequently would be in significant danger of injuring herself if made a full participant in the regular transportation program at the present time. Clearly, Teri's participation is a worthy and achievable goal and one which Alvin ISD should target and strive for. As Teri's orientation and mobility skills become more pronounced and consistent, it is anticipated that Alvin ISD will include this goal in Teri's IEP. Obviously, the decision as to whether Teri possesses sufficient orientation and mobility proficiency for initiation of this goal is one best left up to Teri's orientation and mobility instructor and [the IEP team]."

# V. DISCIPLINE

# A. Can a special education eligible student be suspended or expelled from the school bus?

- 1. Check state law; it may contain a provision that answers these questions more directly/specifically.
- 2. Critically, is transportation a related service on the student's IEP summary? The federal 'Analysis of Comments and Changes to 2006 IDEA Part B Regulations' [71 Fed. Reg. 46715 (August 14, 2006)] answers the question directly:

"Whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is a part of the child's IEP. If the bus transportation were a part of the child's IEP, a bus suspension would be treated as a suspension under Sec. 300.530 unless the public agency provides the bus service in some other way, because that transportation is necessary for the child to obtain access to the location where services will be delivered. If the bus transportation is not a part of the child's IEP, a bus suspension is not a suspension under Sec. 300.530. In those cases, the child and the child's parent have the same obligations to get the child to and from school as a nondisabled child who has been suspended from the bus. However, public agencies should consider whether the behavior on the bus is similar to behavior in a classroom that is addressed in an IEP and whether the child's behavior



on the bus should be addressed in the IEP or a behavioral intervention plan for the child."

#### **B.** Richmond County School District, 52 IDELR 55 (SEA Georgia 2009)

- 1. School required to promptly address student's refusal to board bus.
- 2. The IEP of a 13-year old student with an intellectual disability and autism called for transportation, which the district was providing. But in October, the student's bus driver changed, and the student refused to board the bus. The student's parent started driving him to school. In December, parent asked the school to provide transportation again. In late January, the district proposed a plan to gradually transition the student back onto the bus. The parent refused the offer and kept the student home for the remainder of the school year. The hearing officer held that the district denied the student FAPE in December and January because it did not provide transportation and supportive services by personnel trained in working with students with autism so that the student could access his education. But after the school proposed an appropriate transition plan, the reason the student missed school was his mother's decision to keep him home.

#### VI. SEXUAL ASSAULT

- A. Lopez v. Metropolitan Government of Nashville and Davidson County, 646 F. Supp. 2d 891 (M.D. Tenn. 2009)
  - 1. District could be liable for sexual assault of student where it knowingly placed him on a bus with a student known to engage in sexually inappropriate behavior.
  - 2. A 9-year-old student and a 19-year old student with a history of frequently engaging in sexually inappropriate behaviors were assigned to the same bus route. Parents of both students requested that the school put a monitor on the bus, but the school refused. Failure to act generally does not result in a state created danger but if plaintiff can identify conduct that created or increased the risk of harm, the district could be liable.

### VII. CONFIDENTIALITY

- A. Can information concerning the student's medical condition, etc., be shared with bus drivers and aides? Yes.
  - 1. Check state law. The *Family Educational Rights Privacy Act* (FERPA) supports the argument that a bus driver or bus aide are school officials with "legitimate educational interest" in a student. 34 C.F.R. §99.3.



2. Illinois example: Medical Information Form for Bus Drivers (105 ILCS 5/10-20.35):

Medical information form for bus drivers and emergency medical technicians. School districts are encouraged to create and use an emergency medical information form for bus drivers and emergency medical technicians for those students with special needs or medical conditions. The form may include without limitation information to be provided by the student's parent or legal guardian concerning the student's relevant medical conditions, medications that the student is taking, the student's communication skills, and how a bus driver or an emergency medical technician is to respond to certain behaviors of the student. If the form is used, the school district is encouraged to notify parents and legal guardians of the availability of the form. The parent or legal guardian of the student may fill out the form and submit it to the school that the student is attending. The school district is encouraged to keep one copy of the form on file at the school and another copy on the student's school bus in a secure location.

#### VIII. ACCOMMODATIONS

- A. Can an accommodation, e.g., harness, be implemented for a child on the bus without parental consent? Is this an IEP team decision or can a school district implement a change unilaterally?
  - 1. Check state law.
  - 2. Currently, there is some disagreement about aspects of transportation that have an impact on the health, safety or welfare of the student or the educational program provided to the student.
  - 3. For example, if a harness if not listed on the student's IEP summary, the student is wreaking havoc on the bus and parents will not agree to the use of a harness, is this an IEP team decision (that requires notice to parent and an opportunity to file for due process, thus invoking "stay-put") or is this a unilateral decision that can be made by a school district? Conservative advice is that adding a harness, etc., is an IEP change that requires advance notice, creation of a new IEP summary, and waiting 10 calendar days prior to implementing the change.

# B. Ferndale Public Schools, 51 IDELR 233 (SEA Mich. 2008)

1. Harness acceptable to keep student safe in his seat.

2. Bus driver started using a harness to secure a 15-year-old student with Down Syndrome on the bus when needed due to the student removing clothing, running up and down the aisle while the bus was moving, and changing seats and kissing other students. The student's IEP did not include use of a harness on the bus. When the IEP team next met, the school added to the transportation section that a seatbelt was required and harness when necessary. The parent objected that the harness had been used before it was on the student's IEP and that the harness should not be used unless an aide was on the bus to make sure the student could be released in case of an emergency. The district had an aide on the bus on most but not all days. The hearing officer found that the district's actions were reasonable as the risk of being trapped by the harness in an accident was must smaller than the risk that the student would be injured on the bus due to being out of his seat.

# C. Chicago Public Schools, District #299, 56 IDELR 81 (OCR 2010)

- 1. Where student needs an air conditioned bus, school must provide promptly; delay by bus company does not absolve school district.
- 2. The IEP of a student with spina bifida and bladder condition required an air-conditioned bus for ESY. The bus that was sent to pick her up for ESY was not air-conditioned and was too hot. The school had previously notified the bus company of the need for an air-conditioned bus, but the bus company did not send such a bus until two weeks into ESY. OCR found the district denied the student FAPE.

#### **D.** Detroit Public Schools, 56 IDELR 58 (SEA Mich. 2010)

- 1. Bus driver transporting deaf students must be trained in sign language.
- 2. A bus carried 12 deaf students to and from a school for the deaf. Neither the bus driver nor aide knew sign language. Bus staff were provided a booklet with basic signs, but not training. The bus driver would leave his route to go to a student's house to get assistance from a parent when he needed to communicate with the students (such as when the driver mistakenly told the student to stand up instead of sit down). Parents requested that the IEP specify transportation with an aide who knew sign language, but the district declined. The IEP was not appropriate because it did not address the communication barriers between the student and the bus staff, and therefore created a significantly unsafe situation. Hearing officer required that bus staff be trained in sign language.



# **E.** Fletcher Public Schools, 52 IDELR 50 (OCR 2008)

- 1. Lifting a student in a wheelchair on and off a bus with no lift was not an acceptable accommodation.
- 2. A student used a wheelchair after being injured in an accident. District did not own or operate any school buses or other vehicles with lifts. School offered to provide a private driver or reimbursement if the parents wanted to transport the student. The district looked into leasing or renting a bus or van with a lift, but did not find any available. The district was informed by the Oklahoma State Department of Education that if personnel were properly trained, the student could ride a regular school bus and be lifted on and off. Section 504 requires that federally assisted programs and activities be readily accessible to disabled persons, meaning that the person can enter and leave without assistance from others. District was required to develop and implement a plan to provide transportation to mobility-impaired students that did not include carrying.

# F. Olathe Unified School District #233, 47 IDELR 78 (OCR 2006)

- 1. Parent cannot require district to create a cross walk because student is embarrassed to ride the special education bus.
- 2. Parent claimed district discriminated against her son with a disability by proposing that he ride the special education bus when he could have walked to school if the school had provided cross walk access. Parent claimed that riding the special education bus was humiliating to her son. The school found that adding a crosswalk was not feasible and offered to provide an employee to assist the student across the street, but parent requested and consented to transportation instead. OCR found that the district provided free transportation to the student to allow him to access his education, 504 does not require a certain type of transportation, only that the student has access to school.

#### G. Seymour Board of Education, 55 IDELR 22 (OCR 2009)

- 1. Transportation must be implemented, even if barriers exist.
- 2. A student with visual and hearing impairments had an IEP that included door-to-door transportation. The district had difficulties having the bus go to the student's door because of legal issues with the parent's condo association. This delayed transportation for several months, during which time the district did not provide alternative means for the student to get to school. School should have found an alternative means of transportation in the meantime.



# IX. MODE/METHOD OF TRANSPORTATION

- A. Who decides the mode/method of transportation or choice of specialized equipment that may be necessary for transportation? The IEP Team.
  - 1. The IDEA does not specify the type of vehicles or specific mode of transportation to be used for students who are disabled or the nature of the specialized equipment that is appropriate. These decisions are left to the discretion of each school district and IEP team. *Letter to McKaig*, 211 IDELR 161 (OSEP 1980). Schools should begin with the premise that choosing vehicles and equipment is a matter of IEP team discretion. Parental wishes should be taken into account as with all other decisions; parents are equal members of the IEP team.
  - 2. If the consensus of the IEP team is that certain vehicles and/or equipment is necessary to meet the unique needs of a student, this should be designated in the IEP summary.

#### B. Los Angeles Unified Sch. Dist., 50 IDELR 114 (SEA Cal. 2008)

- 1. Parent could not unilaterally select mode of transportation. Driver and aide were properly trained to deal with student behaviors provided FAPE though the student continued to have behavior incidents on the bus.
- 2. Ten-year-old student eligible for special education as multiply disabled (vision and autism) attended a special education center 15 miles away from his home. The school offered a trained one-to-one aide on the bus; the driver also received special training. The bus was required to undergo regular maintenance and safety checks. The student had several behavior incidents on the bus, though his behavior was usually manageable by the aide using the student's behavior plan. Parent wanted the school to provide a taxi with a one-to-one aide. Parent did not present evidence that taxi drivers are similarly trained or vetted, or that taxis are required to be kept in an equally safe condition as buses. Although student continued to have behavior problems on the bus, school offered FAPE.

#### C. Manville Bd. of Educ., 36 IDELR 177 (SEA NJ 2002)

- 1. Parent could not compel school district to change transportation carrier.
- 2. The ALJ found that while the student's IEP could properly specify the type of transportation or special equipment required, neither the IEP nor the parents could mandate the selection of the company that would actually perform the service.



# **D.** South Orange-Maplewood Bd. of Educ., 39 IDELR 256 (SEA NJ 2003).

- 1. Parents were not entitled to reimbursement for private transportation.
- 2. After the transportation company that the school district used went out of business, the parents of a student were unhappy with the school district's choice of the new carrier. As a result, the parents arranged and paid for private transportation for their child and billed the school district. The hearing officer denied parents request as unreasonable.

# E. Chicopee Public Schools, 110 LRP 73228 (SEA Mass. 2010)

- 1. School required to have data to support that change from van to bus service would meet the student's needs.
- 2. A 15-year-old, 10<sup>th</sup> grade student with a learning disability attended a separate academic and vocational program within a larger high school. Student had been receiving door-to-door van service, but at an IEP meeting, the school proposed changing to regular bus service. Parents objected because they thought the student would become distracted and over stimulated on a large school bus and would be unable to concentrate on work when he arrived at school. Hearing officer found a denial of FAPE where the school did not conduct any assessments or observations prior to proposing the transportation change to document that the change was appropriate.

#### F. Henderson County Public Schools, 52 IDELR 202 (OCR 2009)

- 1. District required to hold an IEP meeting and consider the student's individual needs when parent requests transportation.
- 2. Parent requested transportation for a medically fragile student in a wheel chair. Without holding an IEP meeting, the school provided the parent a transportation schedule indicating the student would be on the bus for 3-4 hours per day. The parent thought that was too long and decided to drive the student herself. The district agreed to reimburse her for one round trip per day. Eventually the district offered 40-minute one-way trips. OCR faulted the district for failing to hold an IEP meeting when the parent requested transportation and when she was concerned about the length of the trip. For the time the parent had transported the student, the district was required to reimburse her for both round trips, not just one.



# X. 'DOOR TO DOOR'

- A. Be very careful when using this phrase in a student's IEP summary, because a hearing officer will usually hold it literally means "door-to-door" assistance, which may or may not be appropriate given the unique needs of the student. Also, check state law.
- B. Sussex-Wantage Regional Bd. of Educ., 57 IDELR 174 (SEA N.J. 2011)
  - 1. Door to door not required for preschooler.
  - 2. School provided transportation to a preschooler with a disability between the student's daycare and the preschool. The parent requested door-to-door service, but the IEP did not specify this as a requirement. The bus dropped the preschool students off in the strip-mall where the day care was located, removed from the main road, about 200 feet from the entrance to the day care, the students were escorted to and from the bus by an assistant and were supervised while they waited. Hearing officer found this provided FAPE.

#### XI. GEOGRAPHIC BOUNDARIES

- A. Is special education transportation limited to a school district's geographic boundaries? Not necessarily.
  - 1. The 5th U.S. Circuit Court of Appeals has ruled that a school district may be required to provide transportation beyond the district's geographic boundaries. *Alamo Heights Indep. Sch. Dist. v. State Board of Educ.*, 557 IDELR 315 (5th Cir. 1986).
  - 2. The court held that "[t]ransportation required as a 'related service' under [the IDEA] is not arbitrarily limited by geographic boundaries of a school district so long as it is required for the special circumstances of the handicapped child and is reasonable when all of the facts are considered." In these situations, it is critical to check state law.

# XII. RESIDENTIAL PLACEMENTS

- A. Is a school district required to provide transportation to and from residential placements for the students and his/her parents? Yes (check state law).
- **B.** Bridgewater-Raritan Regional Bd. of Educ., 50 IDELR 270 (SEA N.J. 2008)
  - 1. Student trips home from residential facility required for FAPE.



2. An 18-year-old student with autism was placed in a residential facility in Wichita, Kansas. The parents wanted transportation included on the IEP. The district argued that he did not need transportation because he lived at school and was making meaningful progress there. The ultimate goal was for the student to return home. The hearing officer found that the student needed transportation in the form of two escorted trips home per year in order to maintain the bond with his parents and gauge his progress.

# C. Los Angeles Unified School District, 52 IDELR 144 (SEA Cal. 2009)

- 1. Reimbursement for parent travel to student's residential facility only required to the extent provided on student's IEP; not for skiing trip.
- 2. A student in an out of state residential facility had an IEP that called for transportation according to the district's travel policy. That policy provided for travel expenses to a residential facility for a few specific purposes, including to meet with the student's therapist. The student's father travelled to the facility to meet with the student's therapist. The student's mother arrived late and missed the session. Then the family went skiing together. The hearing officer required the district to reimburse for the father's travel as it was supported by the district's policy and student's IEP, but not the mother's expenses as she did not visit the therapist. While the IEP listed services for the purpose of reunification with student's family, including family therapy, it did not list visits with parents, note whether family therapy must be in person, nor specify the number of family therapy sessions. The school district did not have to pay mom's costs and only had to pay father's expenses as outlined in the policy/IEP.

# XIII. EXTRACURRICULAR ACTIVITIES

- **A.** Is transportation to and from extracurricular activities required by law? The answer will depend on:
  - 1. Is transportation provided to general education students?
  - 2. Is the activity considered a related service on the student's IEP?

# B. Department of Education, State of Hawaii, 46 IDELR 266 (SEA Haw. 2006)

- 1. Transportation to community-based after school program was required and had to be individualized for the student and program.
- 2. A 17-year-old student with autism was attending a public high school. His IEP included transportation as a related service. As part of his program, he participated in a community-based after school program where he



ventured into the community with a skills trainer to learn community and vocational skills. The skills were based on the goals and objectives in his IEP. The program varied on a daily basis and required him to be transported to multiple locations in the community. The principal said at the IEP meeting that the skills trainer and IISC could not continue to transport the student for liability reasons. Thus no appropriate means of transporting the student for the after school program was identified. The hearing officer ordered team to reconvene to determine an appropriate mode of transportation, and the district to reimburse parent for expenses incurred transporting student to, from, and during after school program.

# C. *Maple Lake Sch. Dist.*, 108 LRP 21568 (SEA Minn. 2007)

- 1. Transportation to away games not required in IEP.
- 2. High school student with cerebral palsy was the basketball team manager. Parent claimed that the school's failure to provide the student transportation to away basketball games was a denial of FAPE. The hearing officer found that the district policy was to only provide bus transportation to away games for competing athletes. The student's IEP did not state that he needed to attend away games to meet his transition goal of participating in extracurricular and community activities. The student was able to participate in extracurricular activities with nondisabled peers, make progress toward his transition goals, and improve his interaction with his peers with the services provided.

# **D.** Bd. of Educ. of the Port of Washington Union Free School, 106 LRP 32717 (SEA N.Y. 2006)

- 1. Late transportation not required where after school activities not required for FAPE.
- 2. District refused to provide late busing so a 10-year old student with a hearing impairment could participate in after school activities at her out-of-district school. Parent claimed late transportation was required to provide the student FAPE and an equal opportunity for participation in nonacademic and extracurricular activities. But the hearing officer found such participation was not required for her to receive educational benefit; the requested activities were not part of the academic, psychological, or social-emotional evaluation recommendations and were not IEP driven. The student's psychologist testified that it is important for all students to participate in social activities to foster relationships and skills, but these activities do not have to be at the school. The student's program would not be as enriching without after school activities but would still provide educational benefit (however, transportation would be required if the IEP called for participation in after school activities). Additionally, the district



had eliminated its own extracurricular activities, so she had the same opportunities as her nondisabled peers.

# **E.** Prince William County Public Schools, 57 IDELR 172 (OCR 2011)

- 1. Where transportation for after school club required, district must act quickly to put it in place.
- 2. Parent requested transportation for middle school student with cerebral palsy and a learning disability after chess club after school. The school attempted to put transportation in place but due to a series of miscommunications and misunderstandings, there was a two month delay. The student's IEP called for transportation. OCR found the district failed to provide the student transportation home after the after school clubs in a manner necessary to afford the student an equal opportunity to participate in the activities.

#### XIV. BUS DRIVER AND AIDE TRAINING

A. Must bus driver and bus aides be trained to serve special education student on buses and other school vehicles? Yes.

Keep in mind that 34 CFR 300.34 (b)(2), added in the 2006 IDEA Part B regulations, clarified that school districts must appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school.

# B. Chicago School District 299, 51 IDELR 145 (SEA III. 2008)

- 1. Replacing the bus driver and aid after a safety incident was sufficient, parent could not force district to contract with a different bus company.
- 2. A 16-year-old medically-fragile student with multiple disabilities was injured when his stroller tipped over on the bus after the bus staff had not properly secured the student. After two other incidents on the bus (where the student was not injured), the parent kept the student home, refusing to put him on the bus until the school contracted with a different bus company. The school continued to use the same bus company but replaced the driver and aide on the student's bus. The hearing officer found that the district's actions were reasonable and offered the student FAPE.



# C. Corpus Christi Independent Sch. Dist., 57 IDELR 297 (SEA Tex. 2011)

- 1. School must revise student's BIP to address misbehavior on bus; additionally specific training was required for the aide to manage the student's behavior.
- 2. Child with ADHD and ED was suspended from the bus and from school for many 1-2 day periods totaling over 10 days in the school year. When a child has transportation as a related service on the IEP, any suspension from the school bus counts as a disciplinary removal under the IDEA. The removals constituted a change of placement. Though the team met and revised the student's FBA, it did not alter the BIP, which was necessary in light of the student's continuing misbehavior and exhibiting new behaviors that were not mentioned in the BIP. The bus monitor had only basic training in behavior management; the district was obligated to provide the monitor more specific training so that student could ride the bus with the other students. Although the student made academic gains, the hearing officer noted that "the measurement of any advancement must be centered on the area affected by the child's disability" and the student did not progress behaviorally.

# **D.** Forest Area Community Schools, 47 IDELR 117 (SEA Mich. 2006)

- 1. Trained bus driver could administer medication, aide not required.
- 2. Parent requested an aide for the bus for an elementary student with epileptic seizures. If a seizure occurred, medication must be administered rectally within one minute. District trained the bus driver to administer the medication and refused to provide an aide. Parents contended that two people were necessary, one to administer the medication and one to supervise the other children and move them away from the student to preserve his privacy and dignity. The school's plan called for the student to sit in the front seat so the driver could observe him and monitor for signs of a seizure, as well as for the use of a drape to preserve the student's privacy. There was no evidence that the bus driver could not pull over and administer the medicine within the one minute time frame.



# XV. BUS RIDE DURATION

A. Is there a time limit for transportation? Check state law; no time limit is contained in federal law or regulation.

#### **B.** Brett K. v. Momence C.U.S.D. 1, 47 IDELR 257 (N.D. III. 2007)

- 1. Individual transportation to reduce bus time was not required where parent did not prove that long rides adversely affected student's progress.
- 2. A 9-year-old student was eligible for special education under the classifications of autism, mentally impaired, and speech language impaired. IEP team agreed he would attend a therapeutic day school and the district would provide transportation and an individual aide. The commute took an hour and a half to two hours. The parent claimed that the long ride exacerbated his behavior problems and therefore impeded his academic progress. She asked the district to provide individual transportation. The court found that the parent did not prove that the student's behavior was worse in the morning after a long commute, and the school did show that he had made progress (on all but one of his goals). District provided FAPE to student.

# C. M.M. v. Unified Sch. Dist. No. 368, 51 IDELR 188 (D. Kan. 2008).

- 1. A 90 minute commute for a teenager with Down syndrome to get to his out-of-district placement did not make his placement overly restrictive.
- 2. The District Court held that a Kansas district had no obligation to educate the student in his neighborhood school. The neighborhood school did not offer the functional skills instruction that the student required.

# XVI. FIELD TRIPS

It can be challenging to meet the needs of students with disabilities during field trips. It is important to keep in mind that students with disabilities cannot be automatically excluded from participating in field trips because of their disability. 34 CFR 104.4.

1. **Individualize participation decisions:** A determination as to whether a student in a special education class can be denied the opportunity to participate in general education field trips must be made on an individual basis. 34 CFR 104.34; *Montebello (CA) Unified School District*, 20 IDELR 388 (OCR 1993). The district has the burden of demonstrating that the student should not participate.



- 2. **Provide equal notice:** Failure to provide equal notice about planned field trips can result in illegal exclusion of students with disabilities. In *Mt. Gilead (OH) Exempted Village School District*, 20 IDELR 765 (OCR 1993), OCR found the district's failure to provide written materials about a field trip to parents of students with disabilities denied them the same opportunity afforded to parents of nondisabled students to make an informed decision about trip participation.
- 3. **Medical conditions may bar participation:** A school district may prohibit a student with a disability from going on a field trip if it believes participation presents an unacceptable risk to the student's health or safety. In *North Hunterdon/Voorhees Regional (NJ) High School District*, 25 IDELR 165 (OCR 1996), the exclusion of a student with cerebral palsy from attending field trips on three occasions was not discriminatory, because on each occasion the student had experienced seizures that day.
- 4. **Provide appropriate accommodations:** If a student with a disability needs related aids or services to participate in a field trip, the school district must provide the services, so long as they are reasonable in nature. School districts have been required to make the same accommodations available on field trips as those provided to students directly in the classroom. *Quaker Valley (PA) Sch. Dist.*, 352 IDELR 235 (OCR 1986).
- 5. **Parents as chaperones:** A school district may <u>ask</u>, but it cannot <u>require</u> the parent of a student with a disability to accompany their child on a field trip when a similar obligation is not imposed upon the parents of nondisabled students. 34 CFR 104.4(b)(iv); *San Saba (TX) Indep. Sch. Dist.*, 25 IDELR 755 (OCR 1996).
- 6. **Prepare in advance:** Consider tools such as social stories and visual schedules that can help prepare and calm students during field trips. Also have a plan for staff to follow if a student exhibits challenging behaviors. Support positive behavior during the field trip by using the concept of a token economy or by building in sensory breaks for the student. Implement a behavioral intervention plan during the field trip, and communicate the plan to the family and student well in advance of the trip. "Practice" with the student before the field trip during in-school activities, such as football games, dances, etc. When it comes time for the actual field trip, the student will have had some experience in the school setting, with the goal of generalizing the skills learned to the field trip setting.
- 7. **Parent and team input:** If school staff think the trip is not advisable for the student, they can't make that decision alone. They need parent and team input. A student's 504 or IEP team should meet to discuss what accommodations will be appropriate for a particular activity.



8. **Disclosing confidentiality health information to field trip chaperones:** The *Family Educational Rights Privacy Act* (FERPA) allows nonconsensual disclosures of information about a student to school officials with a legitimate educational interest in the records maintained by the district. Parent volunteers meet this criteria and may properly be informed of any medical/health situations related to students for whom they are responsible — either in the classroom or during a field trip. *Letter to Anonymous*, 107 LRP 28330 (FERPA Compliance Office 2007).